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6
7 UNITED STATES DISTRICT COURT
8 DISTRICT OF NEVADA

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10 UNITED STATES OF AMERICA,) 2:09-CR-078-JCM-(RJJ)
11 Plaintiff,) GOVERNMENT'S RESPONSE TO
12 vs.) DEFENDANT'S MOTION TO
13 SHAWN TALBOT RICE,) DISMISS FOR LACK OF SUBJECT
14 Defendant.) MATTER JURISDICTION,
15 _____) LODGEMENT OF PROOF OF
16 Certification: This response is timely filed pursuant to docket entry # 115.
17 COMES NOW the United States of America, by and through DANIEL G.
18 BOGDEN, United States Attorney, and J. Gregory Damm, Assistant United States
19 Attorney, and files its GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION
20 TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION, LODGEMENT
21 OF PROOF OF PRIORITY CLAIM AND RELIEF REQUESTED AND
22 MEMORANDUM OF MAXIMS.

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1 The undersigned, counsel for the United States, has made a conscientious review
 2 of the motion listed above filed by defendant Shawn Talbot Rice. To the extent that it
 3 is understood by the government, it appears to relate to issues unrelated to the criminal
 4 case at hand, 2:09-CR-078-JCM-(RJJ). Defendant Rice has provided this Court with
 5 no relevant authority to support any of his motions. The failure to file points and
 6 authorities in support of an issue constitutes consent that a motion be denied as to that
 7 issue. See Local Rule (LR) 7-2(d). In this regard, the government relies upon its
 8 previous response filed on 11/17/2009, CR # 101.

9 This case represents a criminal prosecution against defendants Samuel Davis and
 10 Shawn Talbot Rice. See CR # 1, Indictment. This is not an admiralty case nor is it a
 11 civil case. It is a criminal case for which this Court has jurisdiction. See Title 18,
 12 United States Code, § 3231. The government also relies upon its previous response to
 13 defendant Rice's Subpoena Duces Tercum or in the alternative Petition To: Dismiss with
 14 Prejudice this Matter (CR # 72, 8/14/2009). See CR # 74, Government's Opposition
 15 to Defendant's Motion to Dismiss (CR # 74) filed 8/28/2009.

16 Defendant Rice states "that all Federal crimes are commercial in accordance with
 17 27 CFR 72.11." CR # 115, page 2, lines 9-10. This Court has already addressed and
 18 rejected this notion in another case.

19 The relief the defendant seeks is somewhat difficult to discern, but it
 20 appears he is attempting to settle and close his criminal case against him
 21 by citing provisions of the Uniform Commercial Code, a body of law that
 22 applies to civil, not criminal matters. As the Uniform Commercial Code
 does not apply to this criminal case, his requests for any relief ... are
 denied.

23 *See*, Order dated March 28, 2007, in *United States v. Carl Chester*, 2:06-CR-309-RCJ-
 24 PAL, 2007 WL 951935 (D.Nev.), page 4. *See also*, *United States v. Smoove*, 2008WL
 25 2275568 (D.Kan.), page 3, footnote 1. (27 C.F.R. § 72.11 has no application to a
 26 criminal case.) (Above two cases are not reported in Fed.Supp.2d.)

CONCLUSION

WHEREFORE, based upon the foregoing, the United State respectfully requests that this Court deny defendant Shawn Talbot Rice's motion in its entirety.

DATED this 4th day of January, 2010.

Respectfully submitted,

DANIEL G. BOGDEN
United States Attorney

/s/ J. Gregory Damm
J. GREGORY DAMM
Assistant United States Attorney

Certificate Of Service

I, J. Gregory Damm, hereby certify that I am an employee of the United States Department of Justice, and that on this day I served a copy of the following: GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION, LODGEMENT OF PROOF OF PRIORITY CLAIM AND RELIEF REQUESTED AND MEMORANDUM OF MAXIMS, upon counsel for all defendants appearing in this matter via the CM/ECF system, by electronically filing said GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION, LODGEMENT OF PROOF OF PRIORITY CLAIM AND RELIEF REQUESTED AND MEMORANDUM OF MAXIMS and mailing a copy postage prepaid to Shawn Talbot Rice, P.O. Box 700, #81, Ash Fork, Arizona 86320.

14 Dated: January 4, 2010 /s/ J. Gregory Damm
15 Assistant United States Attorney
District of Nevada